Chattanooga Glass Company *and* James Threatt.
Cases 26-CA-8041 and 26-CA-8703

December 7, 1982

DECISION AND ORDER REMANDING PROCEEDING TO THE ADMINISTRATIVE LAW JUDGE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On July 30, 1981, Administrative Law Judge Leonard N. Cohen issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge concluded that the settlement agreement in Case 26-CA-8041 precluded litigation of the unfair labor practices alleged in Case 26-CA-8703. He therefore recommended that the complaint in this proceeding be dismissed in its entirety. For the following reasons, we disagree with that conclusion.

On September 13, 1979, Charging Party James Threatt filed a charge in Case 26-CA-8041, in which he alleged that he had been threatened with discharge for filing charges with the National Labor Relations Board. On January 16, 1980, the Regional Director issued a complaint based on that charge, which alleged that, on July 30, 1979, Respondent had threatened Threatt with discharge and that, on September 14, 1979, it had issued a warning to him because he had filed charges with the Board. Prior to the hearing in that proceeding, Respondent executed and forwarded to the Regional Director a settlement agreement, dated May 7, 1980, wherein it agreed, *inter alia*, not to engage in the conduct alleged in the complaint. Threatt refused to enter into the agreement but, on May 15, 1980, the Regional Director signed the agreement and indicated to Threatt by letter that he was refusing to "reissue a complaint" in the matter. Threatt, on May 21, 1980, appealed the Regional Director's approval of the settlement to the General Counsel's Office of Appeals in Washington, D.C. Attached to his appeal was a letter (appended to this Decision) which concluded with the statement, "Unfortunately, I was terminated on May 8, 1980." Regional personnel were supplied with a copy of that letter. Thereafter, on June 23, 1980, the General Counsel's Office of Appeals denied Threatt's appeal. On September 15, 1980, the Region then notified both parties that Respondent had complied with the terms of the settlement agreement and that the file in Case 26-CA-8041 was closed. Threatt, on October 23, 1980, subsequently filed a timely charge in Case 26-CA-8703 alleging that he had been illegally discharged on May 8, 1980, *inter alia*, because he had filed charges with the Board and because of his union activities. After investigating the charge, the Regional Director, on November 26, 1980, vacated the settlement agreement in Case 26-CA-8041 and issued the complaint in Case 26-CA-8703, alleging, *inter alia*, that Respondent had discharged Threatt in violation of Section 8(a)(1), (3), and (4) of the Act.

The Administrative Law Judge found that the Regional Director had erred in issuing the complaint in Case 26-CA-8703, and in vacating the settlement agreement in Case 26-CA-8041. In doing so, he rejected the General Counsel's claim that this case came within an exception to the rule enunciated in *Steves Sash & Door Company*,[1] against the litigation of presettlement conduct. In *Steves Sash & Door*, a Board panel indicated that a settlement, if complied with, will bar subsequent litigation of all prior violations except to the extent those violations were not known to the General Counsel or not readily discoverable by investigation or were specifically reserved from the settlement by mutual understanding of the parties.[2] The Administrative Law Judge appears to have found that Threatt's allegedly unlawful discharge was "known" to the General Counsel, or was readily discoverable by investigation. He therefore found that, under *Steves Sash & Door*, the settlement barred the litigation of any of the alleged unfair labor practices in this proceeding since all of the unfair labor practices preceded approval of the settlement agreement. Accordingly, he recommended dismissal of the complaint. As noted, we disagree with this recommendation.

Contrary to the Administrative Law Judge's initial conclusion, we do not think that the allegation that Threatt had been illegally discharged was "known" to the General Counsel in the sense contemplated by *Steves Sash & Door* when the settlement was approved. To be sure, the Region and the General Counsel's Office of Appeals had knowledge that Threatt had been terminated when

[1] 164 NLRB 468 (1967), enfd. as modified in other respects 401. F.2d 676 (5th Cir. 1968).

[2] 164 NLRB at 473.

the settlement became operative, over Threatt's appeal, on June 23.[3] However, the General Counsel knew *only* that Threatt had been "terminated" at the time the settlement became effective. The General Counsel knew none of the particulars of the termination. It is axiomatic that a discharge, standing alone, is not violative of the National Labor Relations Act. Indeed, as the Board has often stated, an employee may be discharged for a good reason, a bad reason, or no reason at all, as long as that reason is not a discriminatory reason. Thus, it is clear that the General Counsel's having knowledge of Threatt's discharge, standing alone, was not a sufficient basis to obligate the General Counsel to conduct an investigation of that discharge. There was no information in Threatt's May 21 letter to warrant the inference that Threatt had been discharged unlawfully. His letter written in layman's language in no way links his termination to the issues in Case 26–CA–8041 that he was then appealing. The Administrative Law Judge, noting that the issues resolved in the settlement agreement in that case involved, *inter alia*, a threat of discharge, seems to have concluded that the correlation between a threat of discharge and Threatt's letter to the Office of Appeals which, *inter alia*, mentioned his termination should have put the Region on sufficient notice to investigate the termination. We disagree. We note that the threat of discharge was alleged to have occurred on July 30, 1979. Threatt's letter indicated that he was terminated on May 8, 1980. Thus, over 9 months elapsed between the two alleged incidents and we consider this too great a time frame for the General Counsel in this case to have divined from Threatt's letter, without more information, a correlation between the two incidents.[4] When Threatt did indicate his view of the illegality of his discharge in his timely filed charge in Case 26–CA–8703, the Regional Office then promptly investigated the matter and issued the instant complaint.

The Administrative Law Judge likewise appears to have concluded that the circumstances surrounding Threatt's discharge, contrary to the General Counsel's contention, were "readily discoverable through investigation" within the meaning of *Steves Sash & Door*. Again, we disagree. First, it is clear that when the Regional Director initially approved the settlement in Case 26–CA–8041, on May 15, 1980, there was no "investigation" then ongoing. The Region's investigation in Case 26–CA–8041 of the unfair labor practices, alleged to have occurred there some 9 months before, had been completed, and indeed Respondent had agreed to a settlement of those alleged violations. Moreover, as noted, when the Regional Director accepted the settlement, no Board agent was on notice that Threatt had been terminated and, therefore, an investigation of this incident could not have been contemplated, let alone required. And, while Board personnel were on notice of the termination when the Office of Appeals rejected Threatt's appeal, we have concluded that this was not the type of notice that should have triggered an investigation of the termination. Hence, the Administrative Law Judge erred to the extent he found that the circumstances of Threatt's discharge were "readily discoverable through investigation."

Accordingly, we think the allegations in this proceeding should be heard on the merits and we shall remand this matter to the Administrative Law Judge for the purpose of conducting such a hearing.[5]

ORDER

It is hereby ordered that the record in this proceeding be, and it hereby is, reopened, and that a further hearing be held before the Administrative Law Judge for the purpose of taking evidence on the merits of the unfair labor practices alleged herein.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 26 for the purpose of arranging such further hearing, and that said Regional Director be, and he hereby is, authorized to issue notice thereof.

IT IS FURTHER ORDERED that, upon conclusion of such further hearing, the Administrative Law Judge shall prepare and serve on the parties a Supplemental Decision containing findings of fact, conclusions of law, and recommendations, and that, following service of the Supplemental Decision on the parties, the provisions of Section 102.46 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, shall be applicable.

[3] It is clear that the Region did not have such knowledge when it approved the settlement on May 15 since Threatt did not reveal his termination until his May 21 appeal letter. Nonetheless, since the settlement was "contingent" on the Office of Appeals sustaining the Regional Director in the event of an appeal, and since Threatt did appeal and the appeal indicated that he had been terminated, we agree with the Administrative Law Judge that the General Counsel was aware of the termination at the time that the settlement became effective.

[4] Cf. *Jefferson Chemical Company, Inc.*, 200 NLRB 992 (1972).

[5] In so concluding, we have considered, and rejected, counsel for the General Counsel's surmises at the hearing, which the Administrative Law Judge recounted at par. 7 of the "Conclusions" section of his Decision. Notwithstanding those reported comments, we have concluded that the General Counsel was not put on sufficient notice by Threatt's letter to pursue the circumstances surrounding his termination.

APPENDIX

James L. Threatt
7161 Craft Road
Hernando, MO 38632
May 21, 1980
Case No. 26-CA-8041
Return Receipt Requested

Dear Sir:

I think that my case should be reopened, because I have been denied Workmen compensation and insurance due to my sickness. Therefore, I have spent the little funds that I have on gas and running to and from the doctors office.

Also, the Company I work for, Chattanooga Glass Company, has been calling the doctors concerning my illness. I have received letters about returning to work on February 22, 1980, March 7, 1980, April 21, 1980 and May 8, 1980.

Mr. Bondurant, the Personnel Manager, seems to disagree with my case. He has turned me down from getting financial assistance from the Food Stamps Office. I have been to the Labor Board, the Union, and Workmen compensation Office, written letters, answered letters and made phone calls concerning this matter. Therefore, I am not getting anywhere, and must obtain my rights.

Please feel free to ask for proof to any thing that is necessary.

I have all letters, doctors receipts, hospital receipts, etc. Unfortunately, I was terminated on May 8, 1980.

Sincerely,
James L. Threatt

DECISION AND ORDER

STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: This matter was heard before me on July 6, 1981, in Memphis, Tennessee. On November 26, 1980,[1] the Acting Regional Director for Region 26 of the National Labor Relations Board, pursuant to unfair labor practice charges filed by James L. Threatt on September 13, 1979, in Case 26-CA-8041, and on October 23 in Case 26-CA-8703, issued an order consolidating cases and consolidated complaint and notice of hearing alleging, *inter alia*, that Chattanooga Glass Company, hereinafter called Respondent, unlawfully discharged Threatt in violation of Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended, hereinafter called the Act. Additionally, the Acting Regional Director vacated and set aside the settlement agreement in Case 26-CA-8041.

On June 24, 1981, counsel for Respondent filed a motion to dismiss the consolidated complaint on the ground that the issues relating to Threatt's discharge are barred from litigation by virtue of the unilateral settlement agreement approved by the General Counsel subsequent to Threatt's discharge. On June 30, 1981, counsel for the General Counsel filed a written opposition to Respondent's motion. By Order dated July 1, 1981, Associate Chief Administrative Law Judge Hutton S. Brandon denied Respondent's motion without prejudice to renew at the hearing on the grounds that determination of the issues raised by said motion required a conclusion regarding the extent of the General Counsel's knowledge of the discharge prior to approval and implementation of the settlement agreement and that such a determination could be best decided on the basis of argument and evidence presented at a hearing.

At the opening of the hearing, counsel for Respondent renewed his motion. After argument I announced my intention to grant Respondent's motion in a written Decision and Order. Prior to the closing of the hearing, counsel for the General Counsel was invited to submit a memorandum of points and authorities by way of a motion for reconsideration, and counsel for Respondent was invited to submit a memorandum of points and authorities in support of the stated intention to grant his motion. Counsel for Respondent filed a memorandum in support of its position. Counsel for the General Counsel telegraphically informed me that she would rely on the arguments made both in her reply memorandum as well as those made at hearing.

Based upon the entire record of the case, including argument of counsel at the hearing, I make the following:

FINDINGS OF FACT

On September 13, 1979, James Threatt, an employee, filed a charge in Case 26-CA-8041 alleging that Respondent had unlawfully threatened him with discharge because he had filed prior unfair labor practice charges with the Board. After an investigation the Regional Director, on January 16, issued a complaint alleging that on or about July 30, 1979, Respondent, in violation of Section 8(a)(1), threatened Threatt with discharge, and, on September 14, 1979, issued a written warning to *Threatt* in violation of Section 8(a)(1) and (4) of the Act for filing charges with the Board.

Prior to a hearing before an administrative law judge, Respondent and the Regional Director agreed to settle the matters raised in the complaint by way of an informal settlement agreement which provided, *inter alia*, that Respondent would not threaten to discharge or issue warning letters to employees because they filed charges with the Board. Additionally, the settlement agreement provided that Respondent would expunge from Threatt's records the warning letter issued to him on September 14, 1979. The settlement agreement was executed by Respondent's personnel manager on May 8. On May 10, Threatt informed the Regional Director, in writing, that he would not enter into the settlement agreement. On May 15, the Regional Director signed the settlement agreement and by letter dated that same date informed Threatt that, in view of the terms of the settlement agreement, he was refusing to "reissue a complaint in this matter."

On May 21, Threatt filed a notice of appeal to the Regional Director's approval of the unilateral settlement agreement. Accompanying his notice and in support

[1] Unless otherwise indicated, all dates hereinafter are 1980.

thereof, Threatt submitted to both the General Counsel and the Regional Office a two-page handwritten letter, the final sentence of which reads "Unfortunately, I was terminated on May 8, 1980."

By letter dated June 23, the Acting Director of the Office of Appeals informed the parties that Threatt's appeal "had been duly considered" and substantially for the reasons set forth in the Regional Director's May 15 letter was denied. This letter makes no reference to Threatt's claim that he had been terminated on May 8.

By letter dated June 26, the Compliance Officer for Region 26 directed Respondent to undertake compliance with the terms of the settlement agreement, including posting of the required notice for 60 days. A copy of this letter was served upon Threatt.

By letter dated September 5, Respondent notified the Region that it had complied with the settlement agreement; and, by letter dated September 15, the Acting Regional Director notified both parties that, since Respondent had satisfactorily complied with all requirements of the unilateral settlement agreement, the file in this matter was thereby closed. The letter further states that the matter will be considered as a closed case conditioned on continued observance of the terms of the settlement agreement.

On October 23, Threatt filed a charge in Case 26-CA-8703 alleging that his discharge of May 8 had been caused by his having engaged in union activities as well as his filing of charges with the Board. After investigation the Regional Director, as noted above, issued a consolidated complaint in which he vacated the settlement agreement in Case 26-CA-8041. The consolidated complaint does not allege any violation of the Act as occurring after May 8. Further, the General Counsel does not allege that Respondent failed to comply with any of the affirmative obligations of the settlement agreement.

Conclusions

It is well settled that presettlement conduct is barred from unfair labor practice litigation by a subsequent valid settlement agreement except to the extent that the unlawful conduct was unknown to the General Counsel or not readily discoverable through investigation or reserved from the settlement by the mutual understanding of the parties, unless a respondent fails to comply with the settlement agreement. *Steves Sash & Door Company*, 164 NLRB 468 (1967), enfd. as modified in other respects 401 F.2d 676 (5th Cir. 1968).[2]

Counsel for the General Counsel, while recognizing this policy, in essence contends that Threatt's discharge comes within an exception to this general rule.

Initially, counsel for the General Counsel contends that the settlement agreement was "consummated" and became "operational" on May 15, the date the Regional Director, without the knowledge that Threatt had been previously terminated, approved the settlement agreement. This argument is totally lacking in merit in view of the specific language in the settlement agreement which provides, "This agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of review." Thus, by its own terms, the settlement agreement was neither "consummated" nor "operational" when approved by the Regional Director, and it did not become operational or effective until June 23, the date on which the General Counsel denied Threatt's appeal.[3]

Counsel for the General Counsel next argues that at no time prior to the filing of the charge in Case 26-CA-8703 on October 23 did either the Regional Director or the General Counsel have knowledge of Respondent's alleged unlawful presettlement conduct. In making this argument, counsel for the General Counsel attempts to draw a distinction between the knowledge of the conduct, which it admittedly had as of May 23, and knowledge that the conduct was unlawful, which it did not possess until sometime after October 23. This argument not only blightly ignores the "not readily discoverable through investigation" clause of the general rule set forth above, but also further misconstrues the duty owed by both the Office of Appeals and the Region to fully and completely investigate all unfair labor practice charges.

Counsel for the General Counsel makes no claim that the evidence with regard to Threatt's discharge was unavailable to the Regional Office during the approximate month that Threatt's appeal from the Regional Director's approval of the unilateral settlement agreement was pending. It is not disputed that the evidence ultimately offered by Threatt regarding the events which took place on or before May 8 forms the basis for the Regional Director's issuance of the consolidated complaint.

Although the settlement agreement involved threats of discharge and a warning received by Threatt for filing of charges with the Board, neither the General Counsel nor the Regional Director took any action while the appeal was pending to investigate the circumstances surrounding Threatt's May 8 discharge. Moreover, several months later the Regional Director closed the case after concluding that Respondent had complied with all the terms and conditions of the settlement agreement.

The Region's failure to investigate the circumstances surrounding Threatt's May 8 discharge at any time prior to Threatt's subsequently filing a new charge is best explained when counsel for the General Counsel candidly agreed at the hearing that the Regional personnel who were supplied with a copy of Threatt's appeal stated that he had been discharged on May 8. No explanation was offered as to why the Office of Appeals, armed with the knowledge that Threatt had been threatened with discharge on several occasions for filing charges with the Board, chose neither to act on or, for that matter, even acknowledge Threatt's claim of subsequent discharge. It is difficult to believe that, had the Office of Appeals

[2] See also *Chauffeurs, Teamsters and Helpers Local Union 215, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (B & W Construction Company, a division of Babcock & Wilcox Company)*, 251 NLRB 1234 (1980); *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978).

[3] The case relied on by counsel for the General Counsel for the proposition that the settlement agreement became operational on the date when the Regional Director approved it *Universal Building Services, Inc.*, 234 NLRB 362 (1968), is inapposite. That case, unlike the present case, was an all-party settlement without any appeal having been taken to the General Counsel.

noted Threatt's claim of a discharge, it would not have ordered that the Regional Office pursue the matter further.

To permit, in these circumstances, litigation of Threatt's discharge would be a waste of resources and an abuse of the Board's processes. *Jefferson Chemical Company, Inc.*, 200 NLRB 992 at fn. 3 (1972).[4]

[Recommended Order omitted from publication.]

[4] I am not unmindful that dismissal of the consolidated complaint due to the General Counsel's inadvertence has a harsh effect on the Charging Party. However, as was the case with the charging party in *Jefferson Chemical, supra*, Threatt, who waited some 5-1/2 months prior to filing the charge relating to his discharge, is not totally without fault here. In any event, and notwithstanding the unfortunate effect on the Charging Party, the General Counsel must be held to comply with the Board's policies.